

# **EXHIBIT 2**

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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 YUKOS CAPITAL SARL, et al.,

4 Plaintiffs,

5 v.

15 Cv. 4964 (LAK)

6 DANIEL CALEB FELDMAN,

7 Defendant.

8 -----x

9 October 21, 2015  
10 11:30 a.m.

11 Before:

12 HON. LEWIS A. KAPLAN

13 District Judge

14 APPEARANCES

15 SCHWARTZ & BALLEN LLP  
16 Attorneys for Plaintiffs  
BY: JEFFREY D. BROOKS

17 MORRISON COHEN, LLP  
18 Attorneys for Plaintiffs  
BY: MARY E. FLYNN

19 BAILEY & GLASSER, LLP (by telephone)  
20 Attorneys for Defendant  
BY: DAVID A. FELICE  
21 RUSSELL M. SOLOWAY

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1 (Case called)

2 THE DEPUTY CLERK: Plaintiff, are you ready?

3 MS. FLYNN: Yes, I am. Thank you.

4 Your Honor, good morning. Mary Flynn from Morrison  
5 Cohen. I am counsel to of the plaintiffs in this case. We are  
6 here today to seek a --

7 THE COURT: Hold on for a second.

8 As I understand it, we have Mr. Felice and Mr. Soloway  
9 on the telephone, is that right?

10 MR. SOLOWAY: That's correct, your Honor. Russell  
11 Soloway.

12 THE COURT: Did Mr. Felice say something?

13 MR. FELICE: Good morning, your Honor.

14 THE COURT: Where are you located, Mr. Felice?

15 MR. FELICE: Your Honor, I am located in Bailey &  
16 Glasser's Wilmington, Delaware office.

17 THE COURT: Mr. Soloway, where are you?

18 MR. SOLOWAY: I am in Bailey & Glasser's Washington,  
19 D.C. office.

20 THE COURT: Ms. Flynn, did you provide defendant's  
21 counsel with copies of these papers?

22 MS. FLYNN: I did not, your Honor. We provided them  
23 with notice that we would be here this morning and had a copy  
24 ready for them. We were not aware that they were not going to  
25 appear.

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1 THE COURT: Did you tell them what relief you were  
2 going to be seeking?

3 MS. FLYNN: Yes, your Honor. In our e-mail notifying  
4 them 24 hours in advance that we would be here at the clerk's  
5 office at 10:00 a.m. this morning, we cut and pasted from the  
6 proposed order to show cause the relief that we were seeking  
7 and told them that we were not yet finished with our papers,  
8 which was the case.

9 THE COURT: Mr. Soloway, did you receive such an  
10 e-mail?

11 MR. SOLOWAY: We did receive that notice, but then we  
12 never received the papers. So we didn't know that it had been  
13 filed or not and what was going to be going on.

14 THE COURT: And I take it you still haven't seen them?

15 MR. SOLOWAY: We still have not received the papers,  
16 that's correct, your Honor.

17 THE COURT: There is a request for a temporary  
18 restraining order so I will let Ms. Flynn say her piece, I will  
19 let you say whatever you care to say, if anything, and we will  
20 take it from there.

21 Ms. Flynn, go ahead.

22 MS. FLYNN: Thank you, Judge.

23 The plaintiffs are entities comprising what is  
24 referred to in our papers as the Yukos Group. These entities  
25 control assets of the former Yukos Oil, which had been Russia's

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1 largest exporter of crude oil.

2 In 2006, the Russian government forced Yukos Oil into  
3 bankruptcy by imposing what the plaintiffs contend were bogus  
4 taxes and penalties. Then the Russian authorities appointed a  
5 receiver over the assets of Yukos Oil who conducted an auction  
6 that the plaintiffs allege was a fixed auction with a  
7 predetermined winner. And the plaintiffs have submitted  
8 documents in other litigations that confirm this fixed winner.  
9 The fixed winner was a company called Promneftstroy, which also  
10 was affiliated and an agent of the Russian state.

11 The plaintiffs have challenged the auction, or  
12 portions of the plaintiffs have challenged the auction in the  
13 Netherlands. And in 2007, the Netherlands court determined  
14 that it could not recognize the Russian bankruptcy order in the  
15 Netherlands because it violated Dutch public order. Since  
16 then, for almost a decade, Promneftstroy and the Yukos Group  
17 have been litigating in the Netherlands and elsewhere over  
18 control of the assets of the former Yukos Oil.

19 The Yukos Group contends that the restructuring of the  
20 Yukos Group and its companies, which created the Foundations,  
21 which are two of the entities that are the plaintiffs, was a  
22 proper exercise to protect the legitimate shareholders of the  
23 former assets of Yukos Oil. And Promneftstroy contends that  
24 there was nothing wrong with the bankruptcy, there was nothing  
25 wrong with the auction, and that this restructuring has

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1 deprived Promneftstroy of control over these assets, which it  
2 contends it has the right to.

3 The defendant Feldman was a director of the plaintiff  
4 corporations, a trustee of the plaintiff trust, and the  
5 corporate secretary of the Foundation plaintiffs. He was also  
6 a lawyer and referred to himself in correspondence as in-house  
7 counsel to the plaintiffs, and that's attached as Exhibit F to  
8 my declaration.

9 Mr. Feldman was terminated from his last association  
10 with any of the plaintiffs in 2014 for misconduct.  
11 Specifically, it was learned that he conspired --

12 THE COURT: Could we get to what you are about today  
13 instead of the history?

14 MS. FLYNN: Sure.

15 One of the causes of action in the complaint against  
16 the former director, lawyer, etc. was a preliminary injunction  
17 to enjoin Mr. Feldman from sharing confidential information  
18 concerning the Yukos Group with Promneftstroy. Obviously, that  
19 would be greatly to the plaintiffs' detriment in the  
20 Netherlands litigation. Mr. Feldman had access to this  
21 confidential information. And in addition to having fiduciary  
22 duties concerning it, he entered into a contract where he  
23 agreed to keep information concerning the plaintiffs  
24 confidential from all third parties even after he was  
25 terminated.

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1           THE COURT: I read about that in your brief, and I  
2 think you have took some liberties with that.

3           MS. FLYNN: It's attached as Exhibit B. The provision  
4 I am specifically referring to --

5           THE COURT: Is paragraph 7.

6           MS. FLYNN: Right.

7           THE COURT: And in your quotation of it at page 5 of  
8 your brief there is an illision, right, the first one?

9           MS. FLYNN: There is. "At any time thereafter, except  
10 as may be proper, and/or lawful, and/or obligatory in the  
11 ordinary course of business of the company." That's not  
12 applicable here.

13          THE COURT: That's what?

14          MS. FLYNN: That's not applicable here.

15          THE COURT: So you thought you would just leave it out  
16 just in case somebody else came to a different conclusion.

17          MS. FLYNN: No, your Honor. I was trying to cut to  
18 the chase to what was actually the issue. There is no business  
19 of the company that he is conducting now at all. He is no  
20 longer associated with the company. And the actions that we  
21 are concerned about are the actions that he is conducting now  
22 as a former director of the company.

23               What we were concerned about, your Honor, and the  
24 reason why we have brought the temporary restraining order, as  
25 opposed to just seeking the preliminary injunction in the case

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1 in the ordinary course, is because on October 6 --

2 THE COURT: The problem with your little argument is  
3 that it's just not consistent with the language you left out.

4 It says, "The director" -- and now I am going to track  
5 as far as you quoted -- "shall not, during the period of his  
6 appointment, or at any time thereafter" -- that's the part you  
7 quoted. Then what you left out was, "Except so far as may be  
8 proper, and/or lawful, and/or obligatory in the ordinary course  
9 of the business of the company as contemplated herein."

10 MS. FLYNN: Correct.

11 THE COURT: Now, at least one reading of this is that  
12 paragraph 7 imposes no obligation of confidentiality to the  
13 extent that the disclosure is either proper or lawful or  
14 obligatory in the ordinary course of the business of the  
15 company.

16 I understand that you will argue that the phrase about  
17 "in the ordinary course of the business of the company"  
18 modifies "proper" and modifies "lawful," but it is not even  
19 remotely self-evident that you would be right in that argument.  
20 It is an argument. And so I am really actually a little  
21 troubled by the fact that you decided not to face up to the  
22 problem, but rather to sweep it under the rug.

23 MS. FLYNN: To be frank, I didn't perceive that  
24 problem until you just mentioned it, to be perfectly frank.  
25 Because I also don't think, even if you look at the term



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1 "proper" by itself, it certainly is not proper for a corporate  
2 officer to share confidential board minutes --

3 THE COURT: I agree with you, if indeed they are truly  
4 confidential, but let's assume for the moment that they are.  
5 But the consequence of the acceptance of that reading, if  
6 that's the right reading, is that the contract adds nothing to  
7 whatever the obligations would be, as inherent in the office of  
8 the director or whatever the particular position in question  
9 might be.

10 MS. FLYNN: The reason why we cited it, and what I  
11 thought it added, was to the extent that there would be an  
12 argument that whatever confidentiality obligation he owed to  
13 the company terminated upon his termination as a director, I  
14 was citing this for the fact that it did not, and that it  
15 extended beyond his termination because of the language "at any  
16 time thereafter."

17 To tell you the truth, that's why I was citing this,  
18 because I agree with you, it doesn't really change anything,  
19 except I thought perhaps the timing. That's why I was focusing  
20 on that language.

21 THE COURT: OK. Go ahead.

22 MS. FLYNN: So the reason why we have brought the TRO  
23 is because, although we had evidence of misconduct that Mr.  
24 Feldman had engaged in while he was still a director, we didn't  
25 have any actual physical evidence of something going on right

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1 now. And on October 6, Promneftstroy submitted in the Dutch  
2 courts -- and those are not public so it's not something that  
3 is available online --

4 THE COURT: Are you saying that they are not online,  
5 or are you saying that they are not public, or are you saying  
6 both?

7 MS. FLYNN: I am saying both. My understanding from  
8 Maarten Drop, who submitted two declarations in support of this  
9 application, is that those documents are not made public; they  
10 are given to the court, but they are not in a public file. In  
11 any event, it's not so much --

12 THE COURT: Where will I find that nugget?

13 MS. FLYNN: My colleague is going to look for that. I  
14 would like to just continue while he looks for that.

15 The point isn't so much the minutes themselves. The  
16 point with regard to the minutes is that we know now that  
17 confidential Yukos Group information has gotten to  
18 Promneftstroy because they have used it in the Netherlands.

19 We contacted everyone else who had access to these  
20 minutes. They all submitted declarations attesting to the fact  
21 that they kept them confidential and didn't distribute them.  
22 That left only the person who took the minutes, which was Mr.  
23 Feldman, who was the secretary, and in this case he is being  
24 represented by the U.S. counsel for Promneftstroy. So  
25 connecting the dots, we think the only possible result here is

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1 that Mr. Feldman gave those minutes to Promneftstroy, either  
2 through his counsel or some other way, but that's how they got  
3 them.

4 We were using those, your Honor, as an example of  
5 confidential information that we know has already been  
6 disclosed. What we are seeking here, pending your Honor's  
7 holding of a preliminary injunction hearing, is a TRO  
8 prohibiting him from sharing -- Mr. Feldman and anyone acting  
9 in concert with him -- from sharing additional confidential  
10 information concerning the plaintiffs with third parties,  
11 specifically, Promneftstroy.

12 THE COURT: Do you have specific information in mind?

13 MS. FLYNN: The problem, your Honor, is that Mr.  
14 Feldman was a very trusted member of the team. He was an  
15 attorney. He had access to outside counsel. These are very  
16 high-stakes litigations. They have been going on for ten  
17 years. He was privy to all of the litigation strategy, all of  
18 the information concerning the assets that are in dispute, the  
19 financial plans, the reasons why certain actions were taking  
20 place, why others weren't, and future plans. This is all going  
21 on in realtime. The concern is that he is in a position to  
22 share these confidential memos, e-mails, minutes, everything  
23 that he had access to, with Promneftstroy.

24 THE COURT: What evidence, apart from these minutes of  
25 seven meetings, is there that he still has any of these

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1 documents?

2 MS. FLYNN: Well, we know that he has e-mails. We  
3 have started our conversations with opposing counsel concerning  
4 trying to negotiate an ESI order. We know that he has e-mails.  
5 He was working at the company up until a year ago so he still  
6 has his e-mails. And everything now is done electronically.  
7 He has copies of things. That's presumably how he got the  
8 minutes to Promneftstroy, that he had copies of them  
9 electronically.

10 THE COURT: Slow down. You say he has e-mails.

11 Now, this is e-mail traffic between him on whose  
12 e-mail account?

13 MS. FLYNN: That's the other issue about this. The  
14 Yukos Group, the individuals who were running the Yukos Group  
15 and the various companies -- and he was one of them, he was the  
16 director of a number of these -- they used their own e-mail  
17 accounts.

18 THE COURT: I am just shocked.

19 MS. FLYNN: They didn't use a Yukos Group server.  
20 Much to my chagrin, it makes ESI much more difficult. They  
21 didn't use a Yukos Group server. My understanding of the Yukos  
22 Group server is that it was only used by administrative  
23 personnel, and that the people who were not support staff, but  
24 were the ones who were actually managing the business, managing  
25 the assets and investments and the litigation, which is a big

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1 part of their business, frankly, all used their own accounts.  
2 So this is on Mr. Feldman's, I believe his was a Gmail, and his  
3 correspondence would be from his Gmail account and to his Gmail  
4 account.

5 THE COURT: Now, can you enlighten me on how long  
6 e-mail traffic in a personal Gmail account would remain  
7 accessible to the account holder?

8 MS. FLYNN: My understanding from talking to counsel  
9 is that the more recent e-mails are accessible; the more  
10 historical e-mails are not. There was a period of time when,  
11 particularly Mr. Feldman's Gmail account, his inbox I suppose,  
12 was too large and things were deleted, but that those were long  
13 ago, and that the more recent e-mails he still has.

14 THE COURT: Define more recent.

15 MS. FLYNN: Certainly within the last few years. We  
16 were talking in our discussion about ESI going back to, I think  
17 it was 2006 or 2007. So those earlier years, 2006, '07, I  
18 can't recall at what point counsel said he would not have  
19 e-mails, but I don't think that it was after 2009 or '10. So I  
20 think in terms of what he still has, it's probably within the  
21 last five years.

22 THE COURT: Are you confident that the cat is not out  
23 of the bag already?

24 MS. FLYNN: I am not, Judge. That's not part of the  
25 TRO, but in my motion for the preliminary injunction I also

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1 seek expedited discovery to get very, very limited document  
2 discovery from Mr. Feldman, specifically, about documents he  
3 has given to Promneftstroy, and a limited deposition of Mr.  
4 Feldman to determine the same thing. Without that, I am  
5 completely in the dark, and we have then clients in the  
6 Netherlands who are litigating against an adversary who may  
7 know everything about their litigation strategy from one of the  
8 lawyers.

9 THE COURT: Who has been gone for almost two years.

10 MS. FLYNN: I understand that, Judge. This is when I  
11 found out that I have got evidence that things have gotten  
12 leaked. I couldn't make a TRO application before now. We  
13 filed the motion for preliminary injunction as soon as we  
14 could.

15 THE COURT: How do you square the terms of the TRO  
16 you're looking for with Rule 65(d), which says that an order  
17 granting a restraining order must state its terms specifically  
18 and describe in reasonable detail the act or acts restrained?

19 MS. FLYNN: The acts that we have sought to restrain  
20 are defendant Feldman, and anyone acting in concert with him,  
21 to be temporarily restrained and enjoined from disclosing  
22 plaintiffs' confidential information to third parties,  
23 including Promneftstroy and its agents and conduits.

24 THE COURT: What differentiates so clearly  
25 confidential from nonconfidential information as to leave

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1 someone subject to your proposed restraining order in a  
2 position to know whether or not a given disclosure of a given  
3 fact is or is not restrained?

4 MS. FLYNN: Well, I would take a page from the  
5 director's agreement that Mr. Feldman signed. Certainly, in  
6 that agreement, the information was described as: Any  
7 information which may come to his knowledge in the course of  
8 his appointment, any information relating to the company or  
9 business, etc.

10 So, if you're just looking at the director's  
11 agreement, I think it can have a very expansive view. But what  
12 is confidential and what is not confidential, Mr. Feldman is an  
13 attorney. If information came to him in his capacity as an  
14 attorney, that's clearly confidential.

15 THE COURT: When does it come to him in his capacity  
16 as an attorney? Does he have to have a particular hat on at  
17 the moment?

18 MS. FLYNN: No. When he was working for the company.  
19 In his own words, he was one of two U.S. lawyers at the  
20 company.

21 THE COURT: But you know full well that not all  
22 communications to an attorney employed by a company, even one  
23 who is employed on an in-house legal staff, are subject to  
24 attorney-client privilege. Stuff that's communicated to him or  
25 her in a different capacity, such as communicated in his

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1 capacity as a director, is not privileged.

2 MS. FLYNN: I agree, your Honor, and so does he. He  
3 is a New York licensed attorney. He is in as good a position  
4 as I am to know what is confidential and what is not.

5 THE COURT: So if you're both blind, then we have a  
6 problem.

7 MS. FLYNN: I think, Judge, if you're seeking to  
8 modify the terms of the TRO to be more specific and give  
9 instruction to this lawyer as to what is confidential and what  
10 is not, it would be anything concerning the litigation  
11 strategy, asset protection, business and affairs, the  
12 descriptions that we give in our papers for the subjects that  
13 are raised in those minutes that he already disclosed to  
14 Promneftstroy.

15 THE COURT: I have looked at those minutes. I didn't  
16 look at every word of course, time has been short, but give me  
17 the three nuggets from those minutes that you think are the  
18 clearest examples of confidential, super-sensitive information.

19 MS. FLYNN: I think certainly, your Honor, the ones  
20 that I have cited, I didn't quote the whole quotes because we  
21 were seeking to file those minutes under seal.

22 THE COURT: I have got them in front of me. Give me  
23 an exhibit number and a page.

24 MS. FLYNN: OK. Frankly, your Honor, in Exhibit 2 --  
25 that was just the first one I flipped to -- where it says in



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1 Section 2.1, "Glendale/Yukos Capital Attachments on the Yukos  
2 Finance shares," where it says, "Even if Promneftstroy is  
3 ultimately held not to have validly acquired the shares in  
4 Yukos Finance, Yukos Finance cannot distribute the money from  
5 the so-called Dutch structure as long as these attachments  
6 remain in place."

7 You have got examples here of instructions briefing  
8 from the in-house lawyers. If you look at the list of who is  
9 attending, there are lawyers who are attending here who are  
10 making presentations about the pending litigations, and they  
11 are giving instructions on what can be done and what can't be  
12 done.

13 THE COURT: Who is DG?

14 MS. FLYNN: David Godfrey. He is a lawyer and he is  
15 on the board of directors of the two foundations.

16 THE COURT: It appears to me from reading this  
17 paragraph that he is the source of the sentence to which you  
18 referred. You agree with that?

19 MS. FLYNN: Yes, I agree with that.

20 THE COURT: Is he the other person you say is also an  
21 in-house lawyer?

22 MS. FLYNN: He was the other lawyer. There were two  
23 U.S. lawyers, one was Mr. Godfrey and one was Mr. Feldman. Mr.  
24 Godfrey was essentially Mr. Feldman's boss, I guess you would  
25 say.

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1           THE COURT: Is there anything confidential about that  
2 sentence? If there is an attachment, it's there, it's  
3 presumably public, but in any case, the other side would know  
4 about it, right?

5           MS. FLYNN: I think in all of these, Judge, in terms  
6 of a legal update, where he is briefing the nonlawyer members  
7 of the board and instructing them what various orders mean and  
8 what they can and what they can't do, these are just examples.  
9 I am not saying that this is the extent of what we want --

10          THE COURT: I understand. You're giving me these  
11 minutes. You have got all excited about these minutes. And I  
12 am asking you to show me the three worst examples. And I  
13 understand your point about the one you have referred to, but I  
14 am somewhat less than swept off my feet by it.

15          MS. FLYNN: In tab 3 -- your Honor, is this transcript  
16 going to be sealed?

17          THE COURT: We will get to that.

18          MS. FLYNN: I am a little uncomfortable quoting in a  
19 potentially public transcript the statements that you're asking  
20 me for.

21          THE COURT: Just point me to it.

22          MS. FLYNN: All right. In Tab 3, Exhibit 3, Section  
23 2.1 is a legal update.

24          Turn to the next page, which is page 3.

25          THE COURT: There are five paragraphs. Which one or

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1 ones?

2 MS. FLYNN: On page 3 of those minutes, the second  
3 paragraph.

4 THE COURT: Why would I be wrong in concluding that  
5 there is nothing sensitive about any but conceivably the last  
6 sentence?

7 MS. FLYNN: The second to last sentence is also -- one  
8 of the issues is, understanding the background --

9 THE COURT: But that sentence makes clear that that  
10 particular horse is already out of the barn, right?

11 MS. FLYNN: Yes. Of course, all of this is already  
12 out of the barn, Judge, because these are the minutes that they  
13 already have in the Netherlands. I agree with you. We  
14 wouldn't have wanted Promneftstroy to have this information in  
15 the Netherlands.

16 THE COURT: But they have got it.

17 MS. FLYNN: They have it now. I am not seeking to  
18 enjoin this. I am enjoining anything else --

19 THE COURT: Slow down. First of all, you want it  
20 sealed. We will get to sealing. That's a whole other story.

21 But, second of all, you want an injunction in  
22 extremely broad terms, arguably terms that are sufficiently  
23 vague, that in the last analysis it's debatable whether an  
24 alleged violation, a contempt charge, could prevail against an  
25 argument of lack of fair notice. And that is Rule 65(d).

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1 That's what I am worried about.

2 MS. FLYNN: These are examples that information that  
3 was clearly treated as confidential by everyone else at the  
4 company --

5 THE COURT: That's an overstatement.

6 MS. FLYNN: By everyone who had access to them. I  
7 have submitted their declarations.

8 THE COURT: In some respects, that's kind of like  
9 saying that if I have a piece of paper on my desk that says,  
10 the Mets are ahead three games to none over the Cubs, and I  
11 have never shown that piece of paper to anybody, and I don't  
12 let people rifle through the papers on my desk, that that is  
13 confidential information. Well, look, I understand that the  
14 fact that I have such a piece of paper, that I have something  
15 that says the Mets are ahead three games to none, that's really  
16 something nobody else knows, but who cares?

17 MS. FLYNN: I agree. But the reason why we should  
18 care about this type of information is because these companies  
19 are in a knock-down, drag-out fight over these assets and over  
20 where is the money, who has the money, and what are they  
21 permitted to do, what are they not permitted to do. Mr. Drop's  
22 declaration talks about 11 injunction motions filed by  
23 Promneftstroy recently over all of these issues. These minutes  
24 talk about what is happening in the litigation, what the  
25 various rulings mean, what they can and what they can't do,

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1 where the money is.

2 THE COURT: As to point number one, what is happening  
3 in the litigation, your adversary knows that.

4 MS. FLYNN: I know. That's what I am saying. That's  
5 the backdrop for it. Because they said, here is what is  
6 happening. Here is what the ruling means, what we can do, what  
7 we can't do, legal advice. Here is where the money is. Here  
8 is what has been moved, here is what has not been moved. These  
9 are the things that they are litigating over in the  
10 Netherlands, and they are shown here because they are examples  
11 that we are concerned because this individual had all of this  
12 information about litigation strategy and asset protection that  
13 he could share with our litigation adversary.

14 THE COURT: If I said to you that I would be prepared  
15 possibly to entertain a restraining order that was more  
16 specific and narrower than the "give me the whole outdoors"  
17 that you have asked for, how would you formulate it?

18 MS. FLYNN: I would formulate it as: Any information  
19 concerning plaintiffs' litigation strategy, legal advice, asset  
20 protection, asset location, and strategy concerning financial  
21 assets.

22 What I am talking about is there are discussions about  
23 moving money to prevent the Russian government from  
24 expropriating non-Russian assets. Information concerning where  
25 the money is going and what the plans are for shielding the

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1     asset, I guess that would come within asset protection, so I  
2     think I have exhausted those very specific areas.

3             THE COURT: All right. I realize there are other  
4     requests here, but let me hear from Mr. Soloway, if he wishes  
5     to be heard, on the TRO part of this.

6             MR. SOLOWAY: I do, your Honor.

7             Your Honor, as you pointed out, a TRO should only be  
8     granted -- and the Second Circuit case law bears this out --  
9     should only be granted on a demonstration of irreparable harm.

10            THE COURT: They have made a pretty good case that  
11    your guy is leaking by virtue of the appearance in the  
12    Netherlands of these minutes, arguably, in breach of his  
13    fiduciary duties and his contract. That, plus the fact that  
14    there is some reason to think he has most assuredly changed  
15    sides, gives some reason to think that he is going to leak some  
16    more. What is wrong with that chain of argument?

17            MR. SOLOWAY: What is wrong with it is, first of all,  
18    it's an assumption that these documents came from him. They  
19    have not shown that the documents came from him.

20            THE COURT: Well, there is evidence before me that  
21    shows that they didn't come from anybody else.

22            MR. SOLOWAY: No. There is evidence before you that  
23    shows that they didn't come from those specific people, not  
24    that it didn't come from anybody else.

25            THE COURT: What is the distinction?

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1           MR. SOLOWAY: We believe that there are others who  
2 have had access to this information as well.

3           THE COURT: You believe or you can prove?

4           MR. SOLOWAY: Well, I can't prove without having seen  
5 the papers that they filed. It's kind of hard to argue --

6           THE COURT: That's a very fair point.

7           MR. SOLOWAY: -- in a void.

8           But, your Honor, we are not dealing with a company  
9 that this Court frequently sees with temporary restraining  
10 orders and emergency actions. We are not dealing with a  
11 company with trade secrets or with patents or with a client  
12 list or other sort of immediate threat or imminent harm. We  
13 are not even dealing, frankly, with a company that does  
14 anything in production. What we are dealing with are assets  
15 that exist and are held in trust. That's what we are dealing  
16 with. And there is an argument between sides as to who owns  
17 those assets. Those assets aren't going anywhere. There is no  
18 harm, there is no imminent harm to the company, there is no  
19 legally cognizable harm that that pile of money or that asset  
20 can suffer, and therefore a TRO is not appropriate, your Honor.

21           Second of all, when you asked counsel, Ms. Flynn, to  
22 kind of zero in on what she was looking to restrain, now that,  
23 as you pointed out, the things that she brought initially,  
24 which are the minutes, the horse is out of the barn, she used  
25 these kind of very overly broad, nonspecific, non-informative

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1 categories that frankly could include any document.

2 To clarify for the Court, Mr. Feldman was never  
3 general counsel, he was never on a legal staff for any of these  
4 companies, yet he is a licensed attorney. He went to law  
5 school and he is a licensed attorney, but he was not acting as  
6 an attorney. Frankly, the action is not brought against him as  
7 an attorney. The action is brought against him as a director  
8 and in his capacity as a director/former director and  
9 secretary, not in a legal capacity. So it's somewhat  
10 misleading to bring up the fact that he went to law school so  
11 he should know better.

12 Also, your Honor the complaint was filed on June 25th  
13 of 2015. In that complaint they asserted in, I believe, Count  
14 Four, they asserted and sought a preliminary and permanent  
15 injunction, and yet now they are representing to the Court that  
16 they only became aware of this problem in October. Well,  
17 months previous, in June, when they filed the complaint, they  
18 apparently were aware of it because they made the allegation,  
19 and of course Rule 11 would have required a basis for that  
20 allegation, regarding breaches of Mr. Feldman. So to me that  
21 strikes as a little disingenuous as well.

22 Finally, your Honor, we are asking before the Court  
23 make a decision for, at the very least, some procedural  
24 fairness and an opportunity for us to view the documents and to  
25 be able to respond intelligently to them so that the Court has



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1 before it our arguments and our response to something as  
2 opposed to responding in a void, which is what we are doing  
3 now.

4 THE COURT: How would your client be harmed, if at  
5 all, by a temporary restraining order along the narrow terms  
6 that Ms. Flynn suggests for the interim while you are having  
7 your opportunity to be heard fully on papers?

8 MR. SOLOWAY: Well, your Honor, I disagree that it was  
9 a narrowing.

10 THE COURT: Whether it's narrow or broad or an  
11 elephant or a giraffe, how would your client be harmed?

12 MR. SOLOWAY: Our client would be harmed simply  
13 because there would be an injunction against him and there  
14 would be a legal action that then they will use as leverage and  
15 they will use as a weapon against my client.

16 THE COURT: How are they going to do that?

17 MR. SOLOWAY: Frankly, I believe they are using this  
18 injunctive relief as kind of an affirmative action against him.  
19 Frankly, also, the initial application was to keep that  
20 information from his attorneys.

21 THE COURT: I didn't understand what you said.

22 MR. SOLOWAY: He would be harmed in the ability to  
23 present and prepare his attorneys for his defense.

24 THE COURT: All right. Anything else that you care to  
25 say?

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1           MR. SOLOWAY: Your Honor, it's simply that under  
2   Second Circuit law, a TRO is an extraordinary remedy, shouldn't  
3   be granted lightly, and, frankly, Ms. Flynn has not met the  
4   burden of irreparable and imminent harm. So we don't believe  
5   that a TRO should be granted in that respect.

6           Thank you.

7           THE COURT: Thank you.

8           Let's go on to the subject of the sealing of the  
9   historical minutes.

10          MS. FLYNN: Judge, the issue with the sealing of the  
11   historical minutes is that, although Promneftstroy has them, it  
12   would be certainly preferable that they not be publicly filed.

13          THE COURT: Why is that?

14          MS. FLYNN: Because the litigations that are going on  
15   in the Netherlands involve various purported stakeholders. The  
16   biggest stakeholders are Promneftstroy and another company that  
17   is referred to in the papers throughout as GML. There are  
18   other minority shareholders. This information, if it is out  
19   there on the Internet -- that's the biggest issue, anyone can  
20   go on Pacer and get this information -- it's only going to make  
21   matters worse in the Netherlands.

22          THE COURT: How?

23          MS. FLYNN: Because all of those other parties are  
24   going to have the same information now that Promneftstroy has.

25          THE COURT: So what?

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1 MS. FLYNN: Now they will be in a position to use it  
2 against the plaintiffs in the Netherlands as well.

3 THE COURT: Show me something that anybody can use in  
4 any material way in those minutes. That's another way of  
5 asking you what I asked you before.

6 MS. FLYNN: I think that there were certainly minutes  
7 that talked about certain actions that weren't being taken at  
8 the present time.

9 Your Honor, could you turn, please, to Exhibit 5?

10 THE COURT: OK.

11 MS. FLYNN: On page 6 of Exhibit 5, under legal  
12 update.

13 THE COURT: Page 5?

14 MS. FLYNN: Under legal update.

15 THE COURT: I don't see such a heading.

16 MS. FLYNN: I'm sorry. Page 6. Where it says legal  
17 update. Steps are currently being taken.

18 THE COURT: I see that sentence.

19 MS. FLYNN: The debtors in Russia are other third  
20 parties. We are not talking about Promneftstroy.

21 THE COURT: This is minutes of a meeting that took  
22 place seven years ago.

23 MS. FLYNN: I understand that, Judge. And you would  
24 think that this whole litigation wouldn't be where it is now  
25 after all this time, but it is. All of these issues are still

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1 being dealt with in the Netherlands.

2 THE COURT: It's very simple. What you have pointed  
3 me to is a statement that says certain steps are presently  
4 being taken as of the 11th of December 2008. Now, either they  
5 were taken or they weren't taken then.

6 MS. FLYNN: That's true.

7 THE COURT: Steps were being taken then to inaugurate  
8 the president, but time has gone by. He was inaugurated. He  
9 was reelected. A lot of water over the dam since 2008.

10 All right. I am not going to seal those exhibits now  
11 because I have given you an ample opportunity to show me  
12 something that really ought to be sealed and I am not  
13 persuaded.

14 Now, the next problem tendered by your application,  
15 Ms. Flynn, is what if Mr. Feldman wants to file in this case  
16 stuff that you regard as confidential. Why isn't the sensible  
17 way to deal with that to require that Mr. Feldman will not file  
18 anything in this case for some stipulated period of time before  
19 he has shown it to you?

20 MS. FLYNN: That will be fine, your Honor.

21 THE COURT: Mr. Soloway, what is wrong with that?

22 MR. SOLOWAY: Could you repeat that one more time?

23 THE COURT: The idea would be that you and your client  
24 would not file any papers in this case that you have not given  
25 to Ms. Flynn at least X hours -- and we will come back to what

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1 X is -- or days before you file it, and she has the opportunity  
2 then to read them, and if she finds something that she thinks  
3 ought to be filed under seal, she will tell you. And if you  
4 can't resolve it, she will come to court.

5 MR. SOLOWAY: I think that would be a reasonable  
6 agreement to reach.

7 THE COURT: So here is what we will do about that one.

8 The language isn't in the order to show cause that I  
9 have, but I will make an oral direction on the record, and it  
10 will be enforceable by contempt. But let's talk about what X  
11 is.

12 Ms. Flynn, how much advance notice do you want?

13 MS. FLYNN: 48 hours electronic, 48 hours e-mail.

14 THE COURT: Is 48 hours OK with you, Mr. Soloway?

15 MR. SOLOWAY: It's unfortunately running into a  
16 lawyer's creed of doing things up until midnight.

17 THE COURT: I know, but you just have to adjust the  
18 schedule.

19 MR. SOLOWAY: I understand, your Honor. I am smirking  
20 as I am saying that.

21 THE COURT: I hope it was a good-natured smirk.

22 MR. SOLOWAY: It was. I assure you it was a  
23 good-natured smirk.

24 Yes, your Honor. I think that would be fine.

25 THE COURT: So it is hereby ordered that the

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1 defendant, Daniel Caleb Feldman, and his counsel, shall file no  
2 papers in this action less than 48 hours after the papers have  
3 been sent by electronic means to Ms. Flynn and her associate.  
4 They may then file them to the extent there is no objection,  
5 that is to say, if there is no objection within 48 hours, they  
6 are to free to file it. If there is an objection, you are to  
7 work it out before filing it or else, if you can't work it out,  
8 Ms. Flynn will have to get to the Court within 48 hours and  
9 seek appropriate relief, but once the 48-hour period is up, Mr.  
10 Feldman and his counsel are free to act absent the contrary  
11 order from the Court.

12 MS. FLYNN: Just to clarify because I was confused  
13 about the two 48 hours.

14 THE COURT: There is only one 48 hours. They can't  
15 file for 48 hours.

16 MR. SOLOWAY: The one issue, simply because of the  
17 timing of this, is that we have an answering brief to a motion  
18 to dismiss that's due on Friday and that has not been fully  
19 drafted at this point.

20 THE COURT: I will extend it to Monday.

21 MR. SOLOWAY: OK.

22 THE COURT: So just to be absolutely clear how the 48  
23 hours works. You can't file anything, that is to say, the  
24 defendant can't file anything until the papers have been sent  
25 electronically to Ms. Flynn and her associate. At the end of

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1 the 48-hour period, you're free to file, unless there is a  
2 Court order requiring filing under seal or you and Ms. Flynn  
3 have worked out an agreement about what gets filed under seal  
4 and what gets filed publicly.

5 Is that clear all around?

6 MS. FLYNN: It's clear, your Honor, except I am  
7 thinking about a Friday to a Monday. If we receive the notice  
8 on Friday, I can't get to the Court until Monday.

9 THE COURT: The period is 72 hours if the filing  
10 occurs on a Friday or Saturday.

11 I'm sorry. If the electronic notice is on a Friday or  
12 Saturday. And if the Monday is a holiday, then it's 96 hours.

13 MS. FLYNN: Thank you, Judge.

14 THE COURT: Clear all around?

15 MS. FLYNN: Clear all around.

16 THE COURT: Clear, Mr. Soloway?

17 MR. SOLOWAY: Can I clarify something, your Honor?

18 THE COURT: Yes.

19 MR. SOLOWAY: In this order are you simply saying we  
20 need to show the exhibits, correct, not the actual --

21 THE COURT: You have got to show everything. Because  
22 your affidavits and papers may contain information that the  
23 other side may claim should be filed under seal.

24 MR. SOLOWAY: Everything?

25 THE COURT: Yes, it's everything.

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1 I do earnestly suggest that you very quickly, even  
2 today, work out an agreed protective order in the usual form,  
3 providing for confidential filings, and you both, I am sure,  
4 know how to do this, and get that in.

5 So I am striking out paragraph 3 of the first decretal  
6 paragraph of the order to show cause on the ground that we have  
7 covered in an oral order.

8 What about expedited discovery?

9 MS. FLYNN: What we have sought is very limited  
10 document discovery and the deposition of Mr. Feldman to  
11 determine what information he has given to Promneftstroy since  
12 2014. Very simple. It can be very short. But I think we are  
13 entitled to know so that we are prepared in the Netherlands to  
14 know what confidential information our litigation adversary has  
15 that we believe they should not have. So we have asked for  
16 very limited discovery, and we have attached, as a matter of  
17 fact, the proposed deposition notice and document requests to  
18 my papers.

19 That is actually not an interim -- it's not expedited  
20 relief that I am requesting today. That's actually in the  
21 motion. So that's what counsel would be responding to as part  
22 of our PI motion.

23 THE COURT: So I don't have to decide that.

24 MS. FLYNN: You don't have to decide that today.

25 THE COURT: Oh, I see.



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1 MS. FLYNN: That's not interim relief. That's the  
2 relief I am seeking in the motion.

3 Unless you want to give it to me today, Judge, and  
4 then we will take the deposition.

5 THE COURT: Not passionately, counsel.

6 MR. SOLOWAY: Was something said?

7 THE COURT: Ms. Flynn said she wasn't seeking that  
8 relief today, unless I wanted to give it to her, and I said,  
9 not passionately, Ms. Flynn.

10 MR. SOLOWAY: I apologize, your Honor.

11 THE COURT: No apology necessary.

12 I am going to require a bond of \$5,000.

13 MS. FLYNN: Thank you, Judge.

14 THE COURT: I have heard nothing to suggest that  
15 anything more than a nominal bond should be posted. We will  
16 say on or before Monday the 26th.

17 MS. FLYNN: That's fine, Judge.

18 THE COURT: Can you get these papers down to Mr.  
19 Soloway today if you haven't already sent them?

20 MS. FLYNN: We can e-mail them. I had hard copies  
21 because I thought they would be here today, but we can e-mail  
22 them as soon as I get back to my office. If I had my phone I  
23 can do it from here, but I don't.

24 MR. SOLOWAY: Will the Court be setting a preliminary  
25 injunction hearing in the coming weeks?

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1           THE COURT: I am going to set a return date for the  
2 motion. Today is October 21.

3           Let's talk about the schedule. Normally the TRO,  
4 unless extended, expires in ten days, which means 14 days the  
5 way it's counted. I may be out-of-date on that, they may have  
6 changed the language of the rule, but the practical bottom line  
7 is 14 days.

8           They did change the language. 14 days after it's  
9 entered, absent consent for an extension. I think 14 days is  
10 November 4. Everybody agree?

11          Now, I am prepared to set it down for November 4 for  
12 argument. I would accommodate the defense with more time, but  
13 I imagine Ms. Flynn would want to consent to the TRO running at  
14 least through the conclusion of the argument.

15          MS. FLYNN: That's correct.

16          THE COURT: What is your pleasure, Mr. Soloway? I  
17 will give it to you on November 4, but I am going to need the  
18 papers filed sufficiently in advance of that for me to make  
19 sense of them. The alternative is, if you want a somewhat more  
20 relaxed schedule, I will accommodate, but I think it's  
21 reasonable to extend the TRO.

22          MR. SOLOWAY: Your Honor, I just want to remind the  
23 Court that they also filed what we perceive to be a tactical  
24 motion to disqualify counsel that was filed yesterday.

25          THE COURT: I am quite aware of that.

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1           MR. SOLOWAY: So I didn't know if the Court wanted to  
2 deal with those issues.

3           THE COURT: I frankly haven't had enough time to focus  
4 on that motion beyond knowing that it's been made and in  
5 general terms what it's about. So I don't want to make that  
6 decision right now.

7           MR. SOLOWAY: Yes, your Honor.

8           THE COURT: If you want to work out a schedule between  
9 you that will bring that on at the same time as the preliminary  
10 injunction, again, I will accommodate you.

11          MS. FLYNN: That's fine with me, counsel, if you would  
12 like to do that. So long as the TRO is continued until we  
13 actually have the PI hearing, I am happy to consolidate both  
14 motions so that you only make one trip.

15          THE COURT: I have got a suggestion for you. We are  
16 going to put it down for now for November the 4th at 10:00.

17          MR. SOLOWAY: That will simply be for the PI?

18          THE COURT: For the moment. And I am going to want  
19 the answering papers October 29, and that includes filing. So  
20 you have got to work in what we talked about a few moments ago  
21 about showing them to the other side.

22          MR. SOLOWAY: We need to provide it to her October 27.

23          THE COURT: Right.

24          Then reply papers will be filed or before October 31.

25          That can't be. We will have to make it November 2.

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1           MR. SOLOWAY: If the Court wanted to do it on the  
2   30th, that would probably be appropriate since they will have  
3   those two extra days to look at it prior to the filing.

4           THE COURT: What about that, Ms. Flynn?

5           MS. FLYNN: I am good with that.

6           THE COURT: So then the reply papers will be due  
7   October 31, as I said. This is issued at 12:25 p.m., and I  
8   have just signed the TRO and the order to show cause.

9           MR. SOLOWAY: Your Honor, would it be possible to have  
10   a reciprocal arrangement where they also need to show us their  
11   papers 48 hours in advance?

12          THE COURT: What obligations of confidentiality do  
13   they owe Mr. Feldman?

14          MR. SOLOWAY: We have concerns that we certainly want  
15   protected, but they don't owe any obligations of  
16   confidentiality to him.

17          THE COURT: I don't see the basis for it.

18          Let me say two more things before we wrap this up.

19          The first is that I really do hope that you two can  
20   work out a somewhat morerelaxed schedule, and one that will  
21   wrap together both the disqualification motion and this one,  
22   and I understand that one of the players on the chessboard is  
23   the duration of the TRO. It shouldn't be a big obstacle, even  
24   though it seems like it at first blush, because I have the  
25   authority to extend it for another 14 days anyway whether there

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1 is consent or not. But I would be happier if you worked out a  
2 schedule that would suit all of your needs, and then I wouldn't  
3 have to do that. I remember well enough my 25 years in the  
4 trenches to know what is involved with something like this over  
5 two weeks, and I really don't want to impose burdens on you  
6 that I would have been very unhappy about in my own day.  
7 That's the first thing.

8 The second thing is that when you see the order to  
9 show cause, the terms of the TRO have been narrowed in  
10 accordance with what Ms. Flynn suggested, but the first time  
11 the language that was modified appears in the document was in  
12 the first decretal paragraph, which actually was the order that  
13 the defendant show cause why an order barring the disclosure of  
14 confidentiality should not be entered. I mistakenly entered  
15 the modified language first in that paragraph. That was a  
16 mistake on my part. It is an immaterial error because I am  
17 construing the motion, in terms of the relief sought, as being  
18 the way plaintiffs asked for it. But the decretal paragraph  
19 containing the TRO, the second decretal paragraph is correct  
20 with the modification that I talked about, and that's where the  
21 restraint on Mr. Feldman is imposed, just so you're all clear  
22 about that.

23 MS. FLYNN: Understood, Judge.

24 THE COURT: I realize you don't have the paper, Mr.  
25 Soloway, but if you have any lack of clarity about what I just

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1 said, now would be the time.

2 MR. SOLOWAY: No, your Honor. I believe once I see  
3 the papers in front of me, it will become clear.

4 THE COURT: I think that is clear. Just be aware that  
5 in the paragraph saying the defendant is directed to show cause  
6 why an order shouldn't be entered, my interlineations in that  
7 paragraph are inoperative. My interlineations in the second  
8 decretal paragraph, which contains the TRO, are operative.  
9 Clear?

10 MS. FLYNN: Clear.

11 MR. SOLOWAY: Yes.

12 THE COURT: All right. I thank you all.

13 MR. SOLOWAY: Thank you for letting us attend  
14 telephonically.

15 THE COURT: I would have, of course, preferred if this  
16 had been handled in a way that had effectively gotten you here,  
17 but I think we did fine.

18 OK. Thank you very much.

19 (Adjourned)

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